

**Publication Date: 10 August 2023**  
**YSP Podcast Transcript: 374. Has the DBPA gone too far with its strict rules for remedial waterproofing?**

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**Intro:** Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source.

**Amanda Farmer:** Hello and welcome to this week's podcast episode. I'm your host, strata lawyer, Amanda Farmer, and my guest this week is Daniel Caruana.

Daniel is the CEO of Danrae Group, protecting buildings and structures from water leaks. Danrae is a family-owned and operated company servicing at the strata civil, commercial and government sectors. When Daniel entered the family business, he started from the ground up. Working on the tools as a waterproofer, obtaining his waterproofing license, builder's license, his master's in Business Administration, and finally his building practitioner's accreditation. With over 15 years experience in the building industry, Daniel has taken Danrae Group to new heights in remedial waterproofing, now becoming one of the best-known brands, particularly in our strata sector.

This is not the first time we've had a chat with Daniel on the show. Daniel was my guest back in episode number 234. In that chat, I asked Daniel the question, "Why do we see so much remediation work in the waterproofing area in our residential strata buildings?"

Now quite a bit has changed since Daniel and I had that chat. We've had the introduction of the Design and Building Practitioners Act, some fairly strict requirements that now need to be complied with when waterproofing work is being carried out in our residential strata buildings. That's what I want us to talk to Daniel about here on the show. and he certainly delivers. I'll take you right on over now to my chat with Daniel Caruana of Danrae Group.

Daniel Caruana, welcome to the show.

**Daniel Caruana:** Good day, Amanda and thanks for having me.

**Amanda Farmer:** It's a pleasure to have you here back on the show, second time around for us and an important time to be talking about these issues. I have so many clients, colleagues, strata manager colleagues, friends and neighbours. Let me just close in my own building who have these questions, who are going through some waterproofing work in whatever shape or form that may take. So I'm so pleased that we have your expertise here with us today.

Big question to start with, but let's see where it takes us. Daniel, what has changed for waterproofing work since the Design and Building Practitioners Act?

**Daniel Caruana:** Yes, so as you've heard, the Design, Build, Practitioners Act has been in since 2020 now. So there has been a lot of changing in respect to remediation. So that's been sort of a big challenge for the remedial industry, especially when it comes to waterproofing. So, the main points are really before the legislation came into place, most defects were generally managed either directly with a building contractor or via a consultant.

And nowadays that is similar though now there's some real change in how a lot of this work is now reported and regulated. So now, works require a registered design practitioner to draw up what's called a regulated design for the work. And then that work needs to be done by a registered building practitioner. And then once all that work is completed, all that information needs to essentially get uploaded to a portal, which then can be referenced or sort of tracked down the road as well. So a lot of the reporting requirements and how design is done is mostly done sort of upfront to mitigate a lot of the sort of patchwork and things that were going on, and further defects, for example, that were happening in the industry.

**Amanda Farmer:** Yes. So these requirements aren't limited to new builds. That's important. We are talking about remedial work, waterproofing work that might be going on in older buildings. Are these requirements applicable to only certain types of

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waterproofing? Is it just roof membranes? What if we're dealing with one bathroom in one unit? Do these requirements apply thereto that waterproofing work?

**Daniel Caruana:** Yes, so as a general rule, the legislation requires you to have a regulated design for anything structural waterproofing or fire-related in a class two and also now class three and nine C. So it will eventually cover aged care and hostels and temporary accommodation. That aside, so, for a regulated design, anything in waterproofing-wise in common area is required. And then, if it's a single bathroom within a unit, it's not required. So that just has to be taken into account. So when there is a leak, say for example, in a shower or something like that, generally speaking, if it's just that one unit, the regulation isn't needed. A regulated design that is.

**Amanda Farmer:** What if it's just one balcony? Does that change anything?

**Daniel Caruana:** Yes it does because the balcony is common property, it does require a regulated design.

**Amanda Farmer:** And you've pointed out there, there's this requirement for a regulated design, then a requirement for a registered building practitioner. I know even in my own community where we're working through some roof waterproofing work at the moment, there are a lot of questions among committee members who don't have all this background that we've been trying to get across for the last few years, asking why we need engineers, why we need specifications, why we need a detailed, very expensive scope of work before we can even go out and get quotes. Is that all about this regulated design and the need to, as you said, get it right from the beginning so that we can avoid these recurring defects down the track?

**Daniel Caruana:** Yeah, so the short answer is yes because when you look at remedial, it's not as easy as a new build. So for example, if you're repairing a balcony and you need to remove the tiles, etc., and then you find that the waterproofing now is affecting, say, the balustrade, then if the balustrade is non-compliant, you then need to upgrade the balustrade. Then the waterproofing will then essentially go under the door of the door threshold, oh, the door is non-compliant or something. So then, this is what happens, it leads to other defects that essentially need to be re-bored up to code, right? So that's why, unfortunately, the expenses have risen with regard to that type of work.

**Amanda Farmer:** And what do you think about that having been in the industry for a long time, probably being involved in jobs where you're correcting work that hasn't been done right first time around? Do you think that's the right way to go about it? I mean, I have a client you've just described exactly my client's situation where they thought it was balcony waterproofing work, they're now being told the balustrade needs to be upgraded because that's a 40-year-old balustrade. It's no longer compliant. New doors for everyone as well. And it's just blowing their minds that what was just a leak in a few balconies is now becoming this very, very expensive job. Do you think the law has gone too far or do you think from your perspective, yeah, we do need to do all of these upgrades to make sure that it's done properly the first time around?

**Daniel Caruana:** Yes, that's a good question. I think the legislation is really good with regards to getting it right, like if we're gonna remediate the balcony, say for example, we get it right. The problem I see is when doing work on an existing building, that becomes a real problem with applying legislation that's essentially meant to prevent defects in a new-built.

So if there was a happy medium where there were some allowances for that type of, you know, if the balustrade is essentially on a building greater than so many years, that was built in within those Australian standards, then maybe there might be a way around that if there was a further allowance for that in the legislation for example. I do know that ACRA, the Australian Concrete Remediation Association, they are working with the department on this very issue. So watch this space basically because I believe there are some improvements for the industry in that regard.

**Amanda Farmer:** That's good to know and it's good for buildings who are looking down the barrel of having to do this kind of work to be aware of that. And while absolutely there is that legal obligation to be met, to properly repair and maintain the common property, it would be devastating, I think, to find out that if you'd waited a few weeks before you signed that contract, that you might

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have not had to do the extensive remedial work to those balustrades and to those doors because the laws changed. So that will be interesting to watch for sure.

I know one of your areas of specialty, Daniel, is roof waterproof membranes. We're talking about remedial work. I mean, how long should a building expect their roof membrane to last?

**Daniel Caruana:** Well, in our opinion, what we've seen in the roofs, we've done a definite minimum of 10 years, a definite minimum. Although with the membranes we're seeing on the market now that are specially designed for roofing, you'd easily expect a lifespan of like 40 to 50 years if they're looked after. And I always approach it with respect to, the value versus costing too. So when you look at these types of membranes on roofs and how long they last, how much should we spend, et cetera, I always look at what is the cost per year of the lifespan of the membrane.

So if I'm looking at a hundred grand for a membrane that might last me 10 years, that's when you look at the cost per year. that's like 10 grand per year. But if I then have a membrane that's 200,000, that's gonna last me 40, 50 years, then you do the maths, you start to do the maths, right? So then you look at, well, if I have a membrane that's gonna last me those amount of years and the money I'm outlaying now, is it gonna prevent me from replacing it within 10 years? That's sort of the thinking behind looking at the roofing membrane and how long it lasts and what you're willing to spend.

**Amanda Farmer:** Because there are horses for courses, I think you may have explained to us in our last podcast chat, there are different types of membranes and it's sounding to me like these come at different expenses. So when you are as a contractor, proposing solutions for clients and laying this out for them, I mean, I imagine price is the objection.

**Daniel Caruana:** Yes, and look, I totally get why that's a pretty high priority, right, because when you look at what we just discussed with regards to costs on remedial, price is a high, sort of on the list when you look at comparing solutions. With regard to that, when you look at what's happening now, a consultant or drawing up the regulator design, they are proposing the membrane that is going to be put down based on their experience and knowledge, etc. So when that comes into play, then you've got different contractors pricing on apples for apples as well.

So in a way, the owners are sort of putting a lot of trust into the consultant's advice as well, because they're not comparing membranes. They're saying, well, this is what we're gonna do. This is what we're gonna put down.

**Amanda Farmer:** And do you say that's okay or do you think owners should try and educate themselves a little bit more and get different opinions and understand what's really needed at their building?

**Daniel Caruana:** I think any knowledge is beneficial. I think owners should educate themselves, to be honest. Yes. I feel that if they do know about the membranes or even just the basics of what's getting done, I feel that they're able to make more informed decisions about what they're willing to put a budget towards. Because I think budgets do get criticized extensively and I understand why, but I think there needs to also be a valid reason for either removing something from a scope or I think that's important. And I think that, yes, they should be educated.

**Amanda Farmer:** Yes, if only to be answerable to the owners when you're putting that big sum to a general meeting, maybe raising a special levy, maybe thinking about a strata loan and these sums are just getting higher and higher, for the committee to be able to explain why that's necessary is really important.

**Daniel Caruana:** Hmm, 100%.

**Amanda Farmer:** So there's the cost of the installation of the membrane, maybe that'll last 10, 20, 30 years, depending on what you've chosen, how much you've spent. What about ongoing maintenance? What kind of costs, if any, should we be maintaining our roof membranes year to year? What does that involve?

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**Daniel Caruana:** Well, the answer is yes because if you look at any supplier that offers an exposed membrane on a roof, in their fine print, from every membrane I've seen, there's always a maintenance clause in there with regards to the warranty being voided if the membrane's not maintained under their conditions. I think it's important to include some form of maintenance in their plan for strata basically. I think that's really important. When they're looking at building their maintenance plan for either their gardens etc. or all the maintenance for the building, I think the roof membrane has to be included.

**Amanda Farmer:** And what does that maintenance entail? Is that something the contractor who installs it can help you with, letting you know what you should be doing in order to protect your warranty?

**Daniel Caruana:** Yes sure, I think in our case, I would say yes, we would definitely maintain the membranes that we've installed. And what's involved in that generally is basically a visual inspection. You just wanna make sure that, is there any wear on the membrane. For example, there might be with a torch on a membrane that has the granules on the surface that is essentially the protection of the membrane. You just want to check things like that whether it may have worn or that's wearing or something. Things like terminations of the membrane, have they come away from the wall or you know, things like that, that you can inspect and get on top of early.

Other things for example might be drainage points, you know, drains, clearing drains, any damage from other trades or bird life. We've seen, funnily enough, birds attack. Once parrots get onto and they have a bit of a chew of things, and you'd be surprised what you'd see. So yeah, generally speaking, it's a visual and also it can be clean as well. You can clean the membranes as well. And timing, it depends. Generally, it's once or twice a year. But it also depends on things like how quickly do your drains clog up. You might have a lot of foliage or trees around the building. Things like that might gauge a more increased maintenance plan.

**Amanda Farmer:** And I imagine if the membrane is in an area that is accessible by owners, by other contractors, if there are perhaps exclusive use areas up there for air conditioning, equipment for solar panels, you've got people coming and going, maybe doing work that is within the knowledge of the owners corporation. Maybe not. Then you might want to be up there checking things a little bit more regularly because I've certainly been involved in cases where buildings have come to me and said, Amanda, we didn't know, but an owner has had an installation up there. It's damaged the membrane. We now have a leak and we don't know when this occurred. Who did it? We have our suspicions, but we haven't been up there checking. So we're not sure.

**Daniel Caruana:** A perfect example of that is a building we were called into, we didn't do the job, but we were called in to inspect it. And they'd literally put in anchor points, say a month before we went in there, and the anchor points literally just went straight through the membrane. So things like that.

So it's like, well, did you not talk to the waterproofing contractor and the anchor points, get them together, say, guys, this is what we're doing, what, you know, so that didn't get done. So they just literally installed them and took off and certified the anchor points, no problem, but the membrane's leaking, it's straight through the membrane.

**Amanda Farmer:** Oh, awful. And therein lies the importance of being on top of these things because, just putting my lawyer hat on, there may be some action that can be taken against the installers or the anchor points because they took no precautions around the membrane. If you let that go for years without addressing it, then you may lose those rights to make claims against other parties. So important to be on top of that.

**Daniel Caruana:** Yes, 100%. So that is exactly why the suppliers include those clauses in their warranties, because of that fact.

**Amanda Farmer:** Now we've been talking a lot on the podcast in recent weeks about insurance, about the rising costs of insurance. What are you seeing with waterproofing in particular, failures to maintain, failures to replace, old or ineffective waterproof membranes? What's the impact from your point of view when it comes to insurance in particular?

**Daniel Caruana:** Yes, so what we've seen with a couple of our clients actually was one was given essentially an ultimatum to repair.

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So one was that they weren't putting in measures to repair the membrane, and there were continual damages. So the insurance company reduced the term that they would be insured. So they reduced it and said, okay, we're gonna renew you only for six months, and then after that, we will assess your property. Another one we have also seen is where the insurer decided to not insure them anymore because they were not complying. So that's sort of the thing that's going on only purely because they see the property as a risk.

So if the owners don't take the approach of "We need to plan this" or have some kind of plan in place to repair it, the insurer will not look favourably on that if they're not done. So that's what we're seeing in the marketplace at the moment.

**Amanda Farmer:** I do know of some buildings, Daniel, where they have all the best of intentions and they're aware of their legal obligations. They know they have to repair and maintain the common property. They've got the insurer, as you say, breathing down their neck, you've got to get this done or we might not renew you in six months' time. But because this process of getting the regulated design done, of putting it out to tender, of then getting quotes from registered building practitioners, this process takes so long because these contractors are so busy, as I understand it, there's still only a small amount who are properly qualified and who want to do this kind of work. They're not able to comply with the insurer's timeframes. Are you seeing that too? Have you got a big backlog of clients waiting for quotes and waiting for work to be done?

**Daniel Caruana:** Yes, yes we are. So unfortunately, more so now we're even seeing owners getting caught up in a bit of the legal system as well and simply just reviewing contracts. So from the time it would take us to start work, that general time from quote to starting work has literally doubled. Simply because owners are also very cautious about what's happening and with the legislation that they are sending every single contract, every single review to the lawyers and they're reviewing that. And I understand that because they need to ensure that it's all compliant. But it's just taking longer, unfortunately. That's what's happening.

**Amanda Farmer:** Yes, it's a good point. A contract that maybe was a \$300,000 contract five years ago is now a million-dollar contract. And for that reason, the strata manager might be saying, "Look, this is worth investing in some legal advice here to make sure that this is all above board.

**Daniel Caruana:** Yes, exactly right. Exactly right.

**Amanda Farmer:** It just creates this cycle of delay in expense, doesn't it?

**Daniel Caruana:** Yes, so from my understanding and my perspective as long as they can prove that the wheels are in motion, I think they're in a good place. I think it's when owners either don't move on it to show that they're actually making progress. I think that's when there's a problem.

**Amanda Farmer:** So your company, Dan Rae, are you registered design practitioners or registered building practitioners? Do you fall into one or more of these DBPA categories?

**Daniel Caruana:** Yes, so we are a registered building practitioner.

So, a licensed builder that has been approved under the legislation for that fact of being able to perform remediation works and building works of class two, et cetera, buildings, yep.

**Amanda Farmer:** So you could tender for projects where a registered design practitioner, often referred to as an engineer or a consultant in our space has put together a scope and a specification, you would be one of those contractors who would then be quoting to actually perform that work.

**Daniel Caruana:** Correct. Yes.

**Amanda Farmer:** Okay, good to know. Anything further that you want to add on this topic, Daniel, before we wrap up?

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**Daniel Caruana:** I thought I might add one small thing. I think another topic is also the emergency building works.

So I've got a roof, a flat roof, it's leaking into one of the tenant's bedrooms. What do I do? I can't wait for a regulated design right now because I've literally got water pouring into my bedroom. What do I do?

So Fair Trading has released a fact sheet on emergency building repair works. You can Google that on the Fair Trading website. If you Google Emergency Building Repair Works, you can find this fact sheet.

So basically what we can do is we can do emergency work. We can stop the leak in the immediate term. So under the legislation, that would be a reasonable excuse to perform these works without a regulated design because I've got water coming in, right? So I can do that. The caveat is that I still have to upload the declaration that "Look, the work I've done isn't conforming to code, but I have done this." You're sort of informing that you've uploaded that information, right? Then you're not off the hook. You then need to work on the proper remediation. You need to put the rules in motion to get a regulated design and do the roof, properly repair the waterproofing.

What we're seeing as a problem is, owners are continually doing these emergency repair jobs. That can fall into then not being a reasonable excuse. So you could fall into not conforming to the legislation basically. So I just wanted to make the owners aware that there are options but it's important to understand that it doesn't get you off the hook by simply doing a patch or an emergency work repair on a roof, that's all.

**Amanda Farmer:** And a good contractor should be able to tell you that, should be able to explain that process. "Hey, yes, I can come in, I can do this without a regulated design, but it is only temporary, it is only emergency work. And ultimately you will need to get another opinion, a scope, a spec, a regulated design to do this on a final basis."

**Daniel Caruana:** Correct. So, the building practitioner is still obligated to upload that information on the portal. Right, so it doesn't get them off the hook completely, but it just allows the whole regulated design piece not to be done, just to get that immediate problem solved, so that they're not getting further water into the unit.

**Amanda Farmer:** Is it then the case that for a leak from a bathroom into another bathroom, or let's use the balcony example from one balcony downstairs to the next balcony, if that leak is fixed for now for a certain period, who knows how long it'll last by somebody coming in and doing a patch waterproofing job or applying some sealant is a common method, that's only going to be a temporary solution, emergency work.

Will the regulated design and the final work that will cure this problem, will that inevitably involve ripping up all the tiles for the balcony, and re-waterproofing the whole balcony because this legislation is just so strict about how comprehensive this work has to be? Is that what owners are looking at always as a final solution or is there such a thing as repairing a small balcony leak by just patching waterproofing on a final basis?

**Daniel Caruana:** Yes, that's a good question. From what we're seeing from the design practitioners that we work with, it's very, very difficult to conform under the legislation without having to do the full balcony, simply because you cannot say that is compliant with the building code if it's done in that way if it's done in a patch or section or something. So that's where the owners would likely be looking at a full repair, yes. Correct.

**Amanda Farmer:** I mean, that just blows my mind.

**Daniel Caruana:** Yes.

**Amanda Farmer:** I appreciate we have to balance this getting remediation work right. But having firsthand experience as a committee member of these types of leaks that in my view can be quite effectively dealt with, maybe not forever, but for a period of

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time by a patch remedy, thinking that the other option is potentially a \$25,000, \$30,000, \$50,000 complete balcony remediation, then add in the balustrades, then add in the Hobbs and the doors, that's just nuts and surely that's got to change if that's what the law says.

**Daniel Caruana:** Well look, that's what, like I mentioned, I do know ACRA are in the midst of this, in trying to get to a point where there is a happy medium so that there is a way of dealing with these works either separate from the design-build or in some form of fashion where owners aren't having to, you know, do this full remediation. for a job that could potentially be fixed at a much smaller cost.

**Amanda Farmer:** Well, I'll certainly be watching this space very closely and do feel free to keep me updated on any progress there, Daniel.

**Daniel Caruana:** Yes, definitely will do.

**Amanda Farmer:** Let our listeners know where they can go to find out more about what you do and connect with you. Now you've said Daniel that you guys are licensed builders, you're registered building practitioners, no doubt you'll be able to work with owners, owners corporations who are coming to you directly, especially in relation to emergency work. And those who are coming to you where you might say, look, this really needs a regulator design. Am I right that you can then connect them to those practitioners that you work with?

**Daniel Caruana:** 100%. Yes, that's right.

**Amanda Farmer:** Excellent. So where's the best place for our listeners to go?

**Daniel Caruana:** The fastest way is obviously [www.danraegroup.com.au](http://www.danraegroup.com.au) that's D-A-N-R-A-E or our phone number is 1-800-326-723.

**Amanda Farmer:** Perfect. I will make sure those links and that number are in our show notes for this episode. I'll also add that link to the fair trading fact sheet about emergency work so that managers and committee members who are looking at that type of work can have a quick read and see if that's a category that you might fall into. Thank you once again, Daniel Caruana, for joining us on the podcast and sharing your insights about waterproofing.

**Daniel Caruana:** Thanks a lot, Amanda, it's been an absolute pleasure. Thanks for having me again.

**Outro:** Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners, reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at [yourstrataproperty.com.au](http://yourstrataproperty.com.au).